

SERVED: November 22, 2005

NTSB Order No. EA-5190

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 22nd day of November, 2005

_____)	
MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-17354
v.)	
)	
MILLENNIUM PROPELLER)	
SYSTEMS, INC.,)	
)	
Respondent.)	
_____)	

ORDER ACCEPTING ADMINISTRATOR'S AND RESPONDENT'S APPEALS

On October 26, 2005, the Administrator filed a notice of appeal from the October 17, 2005, oral initial decision of Administrative Law Judge William R. Mullins, ordering a 6-month suspension of respondent's repair station certificate.¹ The Administrator's notice of appeal was filed within the 10-day period specified by the Board's rules²; however, it was addressed to Judge Mullins's office in Arlington, Texas, rather than to the Office of Administrative Law Judges in Washington, D.C., as

¹ The Administrator sought revocation, based on a series of alleged violations.

² Section 821.47, **Notice of appeal**, provides, in part:

A party may appeal from a law judge's initial decision or appealable order by filing with the Board, and simultaneously serving on the other parties, a notice of appeal, within 10 days after the date on which the oral initial decision was rendered or the written initial decision or appealable order was served....

contemplated by the Board's rules³ and the law judge's post-hearing instructions to the parties.⁴ On October 28, the law judge's staff in Arlington, Texas, forwarded the Administrator's notice of appeal (by facsimile) to the Office of Administrative Law Judges in Washington, D.C. In addition, on October 28, the Administrator also sent copies (by facsimile and certified mail) to the Office of Administrative Law Judges and the Office of General Counsel in Washington, D.C.

Respondent subsequently filed a motion to dismiss the Administrator's appeal, arguing that, "the Administrator did not file her notice of appeal with the correct entity. Instead of filing the notice of appeal with the Board ... she filed it in the administrative law court." The Administrator opposes the motion, arguing that her notice of appeal was not untimely, but simply inadvertently mis-addressed, and notes that the Board has previously accepted similarly mis-addressed documents.⁵ The Administrator also points out that respondent committed the same error she did by addressing his notice of appeal to the law

³ Section 821.7, **Filing of documents with the Board**, provides:

(a) *Filing address, method and date of filing.*

(1) Except as provided in paragraph (a)(2) of this section, documents are to be filed with the Office of Administrative Law Judges, National Transportation Safety Board, 490 L'Enfant Plaza East, SW., Room 4704, Washington, DC 20594, and addressed to the assigned law judge, if any. ...

(2) Subsequent to the filing of a notice of appeal from a law judge's initial decision or appealable order, the issuance of a decision permitting an interlocutory appeal, or the expiration of the period within which an appeal from the law judge's initial decision or appealable order may be filed, all documents are to be filed with the Office of General Counsel, National Transportation Safety Board, 490 L'Enfant Plaza East, SW., Room 6401, Washington, DC 20594.

⁴ After rendering his oral initial decision, the law judge stated that notices of appeal were to be filed with the Office of Administrative Law Judges in Washington, D.C. and provided the correct address. (Transcript 709-10.)

⁵ The Administrator cited Administrator v. Hordon, NTSB Order No. EA-3513 (1992), where the Board granted a respondent's unopposed request to accept a notice of appeal that was timely but "inadvertently misaddressed to the hearing site"; and Administrator v. Ruhn, NTSB Order No. EA-3537 (1992), where the Board denied the Administrator's motion to dismiss the respondent's appeal, finding that the brief, "albeit incorrectly addressed for delivery to either the FAA or the Board, was timely filed (mailed) and, in fact, was received by the FAA."

judge's office in Arlington, Texas, rather than to the Office of Administrative Law Judges in Washington, D.C. (According to the certificate of service on respondent's notice of appeal, it was filed on October 27 and was, therefore, timely.)

The Board strictly adheres to its policy of dismissing untimely notices of appeal and appeal briefs absent good cause or a timely request to file one out of time, as explained in Administrator v. Hooper, 6 NTSB 559 (1998). However, this strict policy does not necessarily extend to mis-addressed documents, such as the Administrator's and respondent's timely notices of appeal in this case. There are at least three different offices at the Board that could be the proper recipient of documents filed in an enforcement proceeding.⁶ Filing of a document with the wrong one of these offices, although inconvenient for the staff of those offices, is not generally the sort of non-compliance with the Board's regulatory procedures that calls for dismissal in a non-emergency proceeding.⁷

ACCORDINGLY, IT IS ORDERED THAT:

Both the Administrator's and the respondent's notices of appeal are accepted as timely filed.

In accordance with section 821.48 of our rules, appeal briefs are due within 50 days after the date on which the law judge rendered his oral initial decision unless the time period is extended pursuant to section 821.11 of our rules.

Ronald S. Battocchi
General Counsel

⁶ As described in footnote 3, above, section 821.7 prescribes that certain documents be filed with the Office of Administrative Law Judges and certain others be filed with the Office of General Counsel. In addition, the parties in this proceeding were also directed by the Chief Administrative Law Judge by order dated April 6, 2005, to address "all future communications in this proceeding" to Judge Mullins at his Arlington, Texas, office.

⁷ However, strict adherence might be appropriate in a case where the expedited time limits for emergency proceedings were applicable. See Administrator v. Briggs, NTSB Order No. EA-4502 (1996), an emergency proceeding in which the Board noted that unjustified delay in emergency proceedings was unacceptable, and stated that it would treat any brief whose receipt was delayed through lack of compliance with the rule requiring service of briefs by overnight delivery or facsimile as untimely and subject to dismissal.